

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

v.

BANG HAI KHONG,

Defendant/Movant.

E-FILED - 10/11/07

Case No.: C-06-02891-RMW
Related Criminal Case: CR-03-20110-RMW

ORDER GRANTING CERTIFICATE OF
APPEALABILITY


On August 23, 2007 this court denied defendant Bang Hai Kong's Motion to Vacate, Set Aside or Correct the Judgment of Conviction and Sentence Pursuant to 28 U.S.C. § 2255. He has appealed that denial and requested a certificate of appealability. The request is granted.

Upon the filing of a notice of appeal and a request for a certificate of appealability, the district court shall indicate which specific issue or issues satisfy the standard for issuing a certificate, or state its reasons why a certificate should not be granted. *See United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997) (citing 28 U.S.C. § 2253(c)(3)). Bang Hai Khong moved to set aside his conviction on the sole basis that his counsel did not properly advise him of the consequences of failing to accept a plea offer. Although the court believes it correctly denied Kong's 2255 motion, jurists of reason could debate whether trial counsel provided ineffective assistance of counsel, specifically whether counsel's advice fell below the standard of care and whether any failure was

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1 harmless. Therefore, the court hereby issues a certificate of appealability.

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3 Date: 10/11/07



RONALD M. WHYTE
United States District Judge

1 Copy of order mailed to:

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